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BY OVERNIGHT DELIVERY

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Re: Request for Information dated June 23, 2005;
Oahu Sugar Company on Waipio Peninsula
Portion of the Pearl Harbor Naval Complex
Superfund Site; Bankruptcy Case No.
05-15100 (N.D. Ill.)

Dear Mr. Mitani:

We represent Kaanapali Land LLC ("Kaanapali"). This letter, together with its attachments and the enclosed documents, constitutes the response of Kaanapali to the Information Request sent by John Chestnutt dated June 23, 2005 ("Information Request").

We believe the Information Request is objectionable for a number of reasons. In short, the Request is (1) beyond the scope of EPA's statutory authority, (2) inconsistent with the Request's own asserted scope, (3) an attempt to secure information from, and perhaps assert liability against, entities that not only have been discharged in bankruptcy from any and all such liabilities, but were never owners or operators of the Waipio site, and (4) inconsistent with the Bankruptcy Code for attempting to invade the province of the Trustee now administering the Estate of Oahu Sugar Company, LLC ("Oahu Sugar"). I will explain these general objections in this letter; additional general and specific objections are noted in the attachments. Notwithstanding all of these objections, and without waiving them, Kaanapali, which has never been identified as a potentially responsible party, is providing a substantial amount of attached information and records (see Attachment A, appended to this letter).

As an initial matter, the Information Request is inconsistent and ambiguous with respect to the subject matter of the Request. Mr. Chestnutt's letter states that "[t]he purpose of this letter is to request information that Kaanapali Land, LLC may have pertaining to OSCO and this Site." Yet many of the questions set forth in Enclosure B appear to have nothing to do with Oahu Sugar and none of the questions concern conditions at the subject site.

As you know, Oahu Sugar filed a Chapter 7 bankruptcy petition on or about April 19, 2005. Pursuant to the Bankruptcy Code, Alex D. Moglia was appointed trustee ("Trustee") to oversee the administration of the estate of Oahu Sugar ("the Chapter 7 Debtor"). Under the Bankruptcy

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Code, the Trustee is the sole representative of the Chapter 7 Debtor's bankruptcy estate. Accordingly, to the extent the Information Request may be deemed to seek information concerning the ability of the Chapter 7 Debtor to pay for a cleanup, or otherwise seek information or records from the Chapter 7 Debtor's files, the Request is objectionable for attempting to invade the province of the Trustee under the Bankruptcy Code. Those requests should instead be directed to the Trustee.

It appears that most of the questions are designed to attempt to determine whether Kaanapali or another entity may have secondary liability assuming that Oahu Sugar has liability for the Site in the first instance, an assumption that I understand is by no means assured. As I believe you know, Kaanapali was neither an owner nor an operator at the subject Waipio site and never has been identified as a Potentially Responsible Party. To the extent the Information Request seeks information related to potential theories of liability that EPA might consider asserting against Kaanapali or another entity, the Request is objectionable as lacking statutory authority. As Mr. Chestnutt's letter acknowledges, under section 104(e) of CERCLA, 42 U.S.C. § 9604(e), on which the Information Request is based, EPA may require information or documents pertaining to three subjects:

- (A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- (B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- (C) Information relating to the ability of a person to pay for or perform a cleanup.

The statute thus does not authorize the instant Information Request, which does not purport to seek information regarding materials at the site, the nature of any release, nor the "ability of a person to pay for or perform a cleanup."

EPA's effort to seek information broadly concerning the corporate parents of, and other entities that may be related in some manner to, Oahu Sugar is especially puzzling and objectionable in light of the information Kaanapali has previously provided to EPA concerning the Chapter 11 reorganization cases in which various of those entities participated and through which they were discharged (see David Curry's letter of April 13, 2005 to Larry Bradfish, a copy of which is appended to this letter as Attachment B).

For your convenience, I will summarize those events once again, although all of these facts are available to EPA through publicly available records. In February 2002, Amfac Hawaii LLC ("AHI") and certain of its subsidiaries and affiliates filed bankruptcy petitions (the "Petitions") in the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court"). At that time, Oahu Sugar was owned by Pioneer Mill Company LLC. Pioneer Mill was owned by Amfac Land Company, Limited. Amfac Land Company, Limited in turn was owned

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by Amfac Holdings Corp., Amfac Holdings Corp. in turn was owned by KDCW, Inc., and KDCW, Inc. in turn was owned by AHI. Each of these direct and indirect parent companies of Oahu Sugar (along with certain other direct and indirect subsidiaries of AHI) filed chapter 11 petitions (collectively, the "AHI Debtors"), together with one entity (FHT Corporation) that was a sister company of AHI. Certain subsidiaries of AHI, including Oahu Sugar, were left out of the bankruptcy because they had no significant assets to contribute to a reorganization. Claims aggregating over \$500 million were filed against the AHI Debtors.

In July 2002, the Bankruptcy Court entered an order confirming a plan of reorganization (the "Plan") for all of the debtors, including the AHI Debtors. Pursuant to that order (as subsequently modified) and the Plan, the AHI Debtors were released and discharged from all claims and liabilities that arose before the Plan's effective date of November 13, 2002. Other than certain minor trade creditors, the unsecured claimants under the Plan whose claims were allowed obtained an effective payment in cash or equity worth about 7% of their claims on average. The Plan's release and discharge apply to all claims of all types, including those "known or unknown" and "asserted or unasserted." *See* Plan, Section XII.D.¹

In addition, the confirmation order and the Plan provide that all entities are "*permanently enjoined*" from "*enforcing, attaching, collecting or recovering in any manner*" discharged claims against the AHI Debtors. *See* Plan, Section X.E. AHI (and, after the Plan was implemented, Kaanapali) periodically reported on the filing of the Petitions, the status of the bankruptcy cases, and the filing, confirmation and implementation of the Plan on its periodic 10-Q and 10-K disclosure reports filed with the SEC.

Thus, even if EPA ever had a valid claim against Oahu Sugar (which we are informed has been contested by Oahu Sugar), no claim could be asserted now against any of the AHI Debtors, nor could there be a colorable rationale for asserting a claim against the even more distantly-related Kaanapali. For EPA to pursue entities even after they have been discharged in bankruptcy would be in direct violation of the Bankruptcy Code, and an inexplicable waste of Agency resources.

Finally, the Information Request is both perplexing and objectionable in light of the responsibility of the U.S. Navy at the subject site. As you know, the Navy owns the entire Pearl Harbor Naval Complex Superfund Site, and has broadly acknowledged its responsibility to address contamination there. Oahu Sugar occupied only a portion of the Waipio Peninsula, pursuant to a lease with the Navy that ended in 1996. At that time the Navy indicated its complete satisfaction with the condition of the parcel vacated by Oahu Sugar, and to the best of our information has never expressed any intention to pursue a claim against Oahu Sugar, either under the lease or otherwise. In these circumstances, with the Navy ready and able to conduct any necessary environmental response actions, it is difficult to understand why EPA, rather than directing the Navy to proceed, would instead seek to impose expensive and time-consuming

¹ Pursuant to the Plan and soon after the effective date, Amfac Land was merged into KLC Holding Corp., which was also an AHI Debtor that was released and discharged under the Plan.